

THE LEONARD LETTER

A weekly electronic newsletter

Bill Leonard, Member

State Board of Equalization

January 5, 2004

"I love the man that can smile in trouble, that can gather strength from distress, and grow brave by reflection. 'Tis the business of little minds to shrink; but he whose heart is firm, and whose conscience approves his conduct, will pursue his principles unto death."

--Thomas Paine, American patriot (1737-1809)

UNDER THE DOME

*****Not as Safe as They Planned*****

Much has been made of the 2001 redistricting plan that carved out safe Democrat and safe Republican legislative districts throughout California. While competitive elections are better for the quality of government, the truth is that the voters are not always as predictable as the map drawers think they are. The 2003 recall election is ample evidence. You have heard the statewide numbers, but a more detailed analysis shows that not only did the recall pass in all 32 districts held by Republicans but that it also passed in 18 supposedly Democrat strongholds. If the voters voted for legislators the same way they voted on the recall we would have 50 Republican seats out of 80 in the Assembly instead of 32.

Further evidence is the actual Schwarzenegger vote. Of the 135 recall candidates, he won a majority or a plurality in 55 Assembly districts. He won not only all 32 Republican-held seats but also an additional 23 seats now "securely" held by Democrats. Voters are not robots, but map drawers, to their own detriment, assume they are. Voters will move away from their party affiliation when given sufficient cause and a viable alternative. They could have easily voted against the recall and voted for a Democrat, but millions of California Democrats did not do so. Schwarzenegger's vote totals have made competitive 23 Assembly districts that just last year were considered secure. When Schwarzenegger says that legislators may suffer consequences for not helping him solve the state's problems, there are 23 incumbents out of the 48 Democrat Assemblymembers who should be listening to the voters back home.

*****Moving Forward on Workers' Comp*****

One of the first issues the legislature must face when it reconvenes today is workers' compensation. Last year's "reforms" have been shown to be completely inadequate and Governor Schwarzenegger has already indicated his eagerness to fix the broken system. With the leadership of Senator Chuck Poochigian, the Governor's reform package focuses on the following issues:

1. The use of objective medical standards
2. The creation of an independent medical review system to determine appropriate treatment protocols.
3. Permanent Disability reform
4. Penalty reform
5. Limiting claims to work-related injuries
6. Expansion of existing cost-saving options such as Alternative Dispute Resolution (ADR), group health, and self-insurance models.

The proposals seek to bring our state's workers' comp costs down to the national average. Early last year, California's workers' comp cost was \$5.85 per every \$100 of payroll versus the national average of \$2.46. More recently, our costs have escalated to \$6.33 per \$100 of payroll, in spite of the "reforms" implemented last year. Under the Governor's plan, we will eliminate \$11 billion from our workers' comp system by 2006, a move that will dramatically improve California's job climate and improve the quality of care for seriously injured workers.

*****Third Quarter Taxable Sales Up From Last Year*****

I am pleased to report that third quarter 2003 taxable sales figure is up 3.1 percent from the same time period in 2002. BoE staff estimates that California businesses completed approximately \$115.7 billion in transactions in the quarter as opposed to \$112.2 billion the prior year. The increase is the largest increase since the first quarter of 2001, a sign that the California economy is on the mend.

ISSUE FOCUS

An Idea That Should Not See the Light of Day

It seems that good ideas take a long time to come to fruition and bad ideas keep getting attention long after they should have died. Once again there are those pushing for the creation of a California State Tax Court. Once again, we should quash this discussion before someone takes it too seriously and imposes yet another layer of burdens on taxpayers. The bad idea is usually offered up by attorneys who are quite comfortable with the U.S. Tax Court and not quite so comfortable with the Board of Equalization. There is not doubt that the BoE is a different environment from formal court. We do not have formal rules of evidence, we allow ex parte communication and submitting briefs is optional. Some argue that the Board is too friendly to taxpayers, others argue that we are too inclined to agree with our own staff.

A tax attorney and friend, Eric J. Miethke, recently shared with me his testimony before the Commission on Tax Policy in the New Economy. I offer to Leonard Letter readers his reasons, with my concurrence, why a state tax court is unnecessary:

1. The current system adequately handles thousands of cases involving sales tax, personal and corporate income tax, state-assessed property tax, and special tax appeals. Miethke cites as evidence the fact that fewer than 30 of these thousands of cases were appealed to the courts in 2002, and writes, "The Board is flexible enough to make generally well-reasoned decisions" both in complex cases argued by professionals and for average taxpayers with boxes full of receipts arguing for themselves.
2. There are no cost savings from creating a new court. The BoE would still have to exist - along with the Franchise Tax Board and Employment Development Department tax functions for that matter. There are simply not enough cases requiring a specialty court's attention for this to make fiscal sense.
3. The current system works because the BoE not only makes the regulations, but also then hears the cases that arise from those regulations. That puts us in the unique position to correct our own mistakes or advocate for legislative change when something is not working well.
4. Short of a constitutional amendment, there is no way to have a state court hear local property tax appeals.
5. There are not enough qualified judges to sit on such a court. Miethke

says, "People with such expertise are in short supply and high demand, and are unlikely to be interested in the relatively modest salary paid to the judiciary."

None of which is to say there cannot be improvements to the current system. Miethke, for example, calls on the BoE to publish more of its decisions to build up a more coherent body of law, something I have been working with my colleagues to accomplish. I also still believe that we could accomplish more for less money if we combined the tax functions of the BoE, FTB and EDD. It is nonsensical for three state agencies to be doing essentially the same function, and it is unfair to taxpayers to have to jump through hoops with separate bureaucracies. I hope Mr. Miethke's testimony is taken seriously by the Commission and anyone else who continues to offer up a state tax court as a solution to a non problem.

MISCELLANY

*****Three More Words to Know*****

Each week, the Leonard Letter features a few of the words from a list of 100 words that some educators say every high school student should know. The full list may be viewed at

[http://www.houghtonmifflinbooks.com/booksellers/press_release/100words/.](http://www.houghtonmifflinbooks.com/booksellers/press_release/100words/)

88. Tempestuous (adj) --- Tumultuous; stormy: Governor Gray Davis' tempestuous relationship with the voters of California resulted in his recall.

89. Thermodynamics (n) --- The science which deals with the relationships and conversions between heat and other forms of energy: Senator Everett Dirksen used to say that if you make politicians feel the heat they will soon see the light; this is simply the principle of thermodynamics applied to politics.

90. Totalitarian (adj) --- form of government in which the political authority exercises absolute and centralized control over all aspects of life, the individual is subordinated to the state, and opposing political and cultural expression is suppressed: President Bush's efforts in Iraq have eliminated the totalitarian regime and are working to foster an open, democratic political system.

BOE AND LEGISLATIVE DATES

January 5, 2004 --- Legislature reconvenes in Regular Session.

January 6, 2004 --- Governor's State of the State address.

January 10, 2004 --- Governor must submit budget to Legislature.

January 19, 2004 --- Rev. Martin Luther King holiday.

January 27, 2004 --- BOE meets in Sacramento.

January 31, 2004 --- Last day for bills introduced in 2003 to pass their house of origin.

February 20, 2004 --- Last day to introduce bills this session.

NOTABLE DATES/ HISTORY

January 5, 1836 --- Davy Crockett arrives in Texas, just in time for the Alamo

January 5, 1972 --- NASA announces development of space shuttle

January 6, 1919 --- Theodore Roosevelt, 26th President, dies at age 60

January 7, 1789 --- First national (Presidential) election in U.S.

January 8, 1790 --- George Washington delivers first "State of the Union" address

January 8, 1964 --- President Lyndon B. Johnson declares "War on Poverty"

January 9, 1799 --- Income tax introduced in U.K.

January 10, 1776 --- Thomas Paine's "Common Sense" is published

January 10, 1878 --- U.S. Senate proposes female suffrage

January 11, 1935 --- Amelia Earhart becomes the first person to make a solo airplane flight from Hawaii to California.

GENERAL TAX INFORMATION

For answers to your general tax questions, call the Board of Equalization information center. Customer service representatives are available to help you from 8:00 a.m. to 5:00 p.m. Pacific time, Monday through Friday (except state holidays).

Toll-free number: 800-400-7115

TDD service for the hearing impaired
TDD phones: 800-735-2929
Voice phones: 800-735-2922

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